ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	CC Docket No. 96-98
Petition of Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell for Expedited Declaratory Ruling on Interstate IntraLATA Dialing Parity or, in the Alternative, Various Other Relief	File No. NSD L-98-121

OPPOSITION OF AT&T CORP.

Mark C. Rosenblum
Roy E. Hoffinger
James H. Bolin, Jr.

Its Attorneys

Room 3245H1
295 North Maple Avenue
Basking Ridge, NJ 07920
(908) 221-4617

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SUMMARY

Pacific has long opposed the Commission's ILP rules with every means and argument at its disposal. First, Pacific questioned the FCC's jurisdiction. In support of this argument, Pacific assured the 8th Circuit that it and other LECs could easily comply with two sets of rules governing interstate and intrastate intraLATA dialing parity. When the 8th Circuit accepted these jurisdictional arguments and vacated the Commission's rules governing intrastate intraLATA dialing parity, Pacific submitted to the Commission a petition to waive its rules as applied to interstate ILP ("Interstate ILP Waiver Petition"). The basis of that petition was Pacific's assertion -- in stark contrast to its representations to the 8th Circuit -- that it could not implement interstate ILP by February 8, 1999, as required by the Commission's rules, without making costly modifications to its network and engendering customer confusion.

Pacific continued actively to lobby the Commission in support of its interstate waiver petition through March 1999. Pacific never revealed that after submitting its Interstate ILP Waiver Petition it had performed the work, and fixed the problems, that were the basis for that waiver request. By continuing to actively support a petition that was premised on the nonperformance of that work and representing that it still needed a waiver, Pacific was impliedly representing that the work had still not been performed.

On January 25, 1999, the Supreme Court issued its decision in AT&T Corp. v. Iowa Utilities Board, which reaffirmed the Commission's authority to adopt rules governing both intrastate and interstate dialing parity and reinstated the rules adopted in the Second Local Competition Order. But Pacific did not immediately begin to perform the work that it claims in its latest waiver petition will be necessary for it to implement intrastate intraLATA dialing parity. Instead, it argued to state commissions, including California's, that the FCC's rules were

not effective, and that it did not have to comply with them. Alternatively, Pacific has argued and continues to argue to state commissions that the FCC's rules are "advisory" only and not binding on it or the states. Moreover, Pacific also continues to argue to the California commission that it does not have an approved implementation plan, and that it therefore is not required to implement dialing parity by May 7, 1999. Pacific does not mention any of these arguments in its purportedly "limited" petition to the Commission seeking a region-wide waiver of the dialing parity requirements through June 15th.

Against this background, Pacific's petition should be summarily denied. It is simply impossible to determine what Pacific has or has not done, and, correlatively, what still needs to be done, in order to provide dialing parity. The only finding that could be supported by this record is that Pacific can and will do anything to forestall implementation of dialing parity. Denying Pacific's petition will ensure that it brings the benefits of dialing parity by May 7, 1999 to as many consumers as possible. If and to the extent that Pacific is genuinely unable to complete implementation by that date, it can and should be held accountable through appropriate remedies under the Communications Act.

In all events, the circumstances alleged by Pacific – even if true and otherwise excusable -- do not warrant the drastic relief of a blanket waiver until June 15. The petition alleges no basis, much less a compelling one, to grant a waiver anywhere outside of the specific LATAs in which Pacific alleges the existence of technical problems that prevent its timely implementation of ILP. Pacific does not claim any technical inability to provide dialing parity in the vast majority of its territory by May 7, 1999, in accordance with the Commission's rules.

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OPPOSITION OF AT&T CORP.

Pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, and the Public Notice issued April 8, 1999, AT&T Corp. ("AT&T") hereby opposes the petition for waiver ("Petition") filed April 2, 1999 by Pacific Bell and Nevada Bell (collectively, "Pacific") seeking permission to implement intraLATA toll dialing parity ("ILP") on June 15, 1999, rather than on May 7, 1999 as required by the Commission's ILP Order.[1]

I. The Record Shows Clearly That Pacific's Claims Concerning Its Readiness To Provide ILP Cannot Be Credited

The history of Pacific's claims regarding dialing parity make plain that its paramount goal is to avoid providing ILP for as long as it can. In 1996, the Commission ordered all BOCs to implement full 2-PIC dialing parity in each state coincident with their obtaining

[1] Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket 96-98, FCC 99-54, released March 23, 1999, ¶ 7 ("ILP Order").

§ 271 relief for that state, or by February 8, 1999, whichever came first.[2] Pacific challenged these rules on jurisdictional grounds, arguing in the Eighth Circuit that only the states could adopt regulations governing intrastate ILP.[3] Before the appeals court, Pacific emphasized that state regulation of intrastate dialing parity would not impair the Commission's jurisdiction. Specifically, it argued that "[a]llowing States to adopt their own standards for intrastate dialing parity . . . will have no effect on interstate communication, much less 'negate' the FCC's exercise of interstate jurisdiction," and that "[t]here has never been any suggestion . . . that such State regulation could disrupt interstate service or in any way affect the FCC's capacity to regulate interstate communications."[4]

Although it had assured the Eighth Circuit that the FCC's ability to regulate interstate ILP would in no way be affected by dividing dialing parity jurisdiction between the Commission and the states, in September 1998 (more than a year after the decision in California v. FCC), Pacific sought a waiver of the Commission's interstate ILP requirement.[5] In that petition, Pacific argued that dual state and federal jurisdiction over dialing parity would create

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2 See Second Report and Order and Mem. Op. and Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 19392, 19424-26 (1996) ("Second Report and Order").

3 See California v. FCC, 124 F.3d 934, 938 (8th Cir. 1997), vacated in relevant part sub nom. AT&T Corp. v. Iowa Utils. Bd., 119 S.Ct. 721 (1999).

4 Brief for Petitioners Bell Atlantic Telephone Companies, Pacific Telesis Group, and SBC Communications Inc. and Supporting Intervenors, California v. FCC, (8th Cir. No. 96-3519) at 15 (February 14, 1997) (emphases in original).

5 Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell, Petition for Expedited Declaratory Ruling on Intrastate IntraLATA Toll Dialing Parity or, in the Alternative, Various Other Relief, filed September 18, 1998, CC Docket No. 96-98, File No. NSD L-98-121, p. 3 ("The SBC LECs have already prepared their respective networks to provide full 2-PIC intraLATA presubscription.") ("Interstate ILP Waiver Petition").

confusion and added costs by imposing potentially differing schedules for inter- and intrastate ILP. At that time, Pacific stated unequivocally that it had "already prepared" for "full 2-PIC intraLATA presubscription," and contended that in order to support interstate-only ILP, it would have to make unspecified modifications to its network and systems.[6]

Now that the Supreme Court's ruling in AT&T Corp. v. Iowa Utilities Board has established unequivocally that the Commission has jurisdiction over all aspects of dialing parity, Pacific has abruptly changed course. Pacific's most recent ILP Petition asserts that on October 15, 1998 (less than a month after filing its first ILP waiver petition), it began modifying its network to provide interstate-only ILP, thereby disabling its switches' capacity to provide dialing parity on intrastate intraLATA toll calls. Although (indeed, perhaps because) these modifications eliminated the basis for its October 15 waiver request, Pacific did not advise the Commission of this fact until it filed the instant Petition on April 2nd. Instead, throughout the fall and winter of 1998 and 1999, Pacific continued vigorously to pursue its interstate-only ILP waiver, even though it now contends that its purported basis for that relief -- its inability to provide interstate ILP -- no longer existed. As late as February 1999, Pacific wrote to the Commission that "**nothing has changed** to render the SBC LECs' original petition moot or inapplicable."[7] It is only now, when Pacific's interests have shifted in response to changes in the

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6 Interstate ILP Waiver Petition, p. 3; see also ILP Order, ¶ 8 ("SBC has conceded that its networks are prepared to provide full 2-PIC interstate and intrastate intraLATA presubscription.").

7 Opposition of Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell to MCI's Emergency Motion to Dismiss, filed February 8, 1999 in Petition of Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell for Expedited Declaratory Ruling on Interstate IntraLATA Dialing Parity or, in the Alternative, Various Other Relief, Docket No. NSD L-98-121, p. 2 (emphasis added).

governing law, that its former inability to provide interstate ILP has been transmogrified into an inability to provide anything else.

There is, moreover, clear evidence that Pacific seeks to delay its implementation of intraLATA dialing parity beyond the June 15, 1999 date the Petition proposes. The Petition thus is not merely a request for a limited extension of the ILP Order's May 7th deadline, but the leading edge of a campaign to continue to deny consumers and competitors the benefits of full and fair intraLATA competition long after June 15th. A California PUC ("CaPUC") Administrative Law Judge recently found that Pacific has an approved dialing parity plan for that state, and accordingly is required to implement ILP no later than May 7, 1999.[8] Although Pacific conceded in its April 6th comments on the ALJ's decision that it "long ago filed an intraLATA presubscription implementation plan [for California] and that plan was litigated and approved ....,"[9] it nevertheless continues to seek to postpone its implementation of ILP beyond the May 7th date established by the Commission's ILP Order.

First, even in the wake of the Supreme Court's decision in Iowa Utilities Board and the ILP Order, Pacific continues to argue in California proceedings that the CaPUC retains the authority to permit Pacific to postpone provision of ILP until it obtains interLATA authority pursuant to § 271.[10] This argument is transparently meritless. The ILP Order recognizes that the

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8 See Draft Decision of ALJ Walker, issued March 25, 1999, pp. 1, 3, in Alternative Regulatory Frameworks For Local Exchange Carriers, (California Public Utilities Commission, I.87-11-033) (finding that "Pacific's plan for dialing parity was approved by this Commission in D.97-04-083 on April 23, 2997" and ordering Pacific to comply with the FCC's ILP Order by implementing ILP no later than May 7, 1999).

9 Pacific Bell's (U 1001 C) Comments On The Draft Decision On Dialing Parity, filed April 6, 1999 in Alternative Regulatory Frameworks For Local Exchange Carriers, (California Public Utilities Commission, I.87-11-033), p. 8 ("Pacific's State Brief").

10 See, e.g., id., p. 4.

Commission has jurisdiction over ILP implementation, and establishes a schedule which the states may depart from only to the extent they wish to accelerate it.

Second, although Pacific admitted in its comments on the California ALJ's decision that it has an approved dialing parity implementation plan for California, it also stated there that it intends to file a new plan on April 22, 1999.[11] By filing a new plan, Pacific hopes to delay ILP until well after the June 15th date the Petition proposes -- indeed, it admitted in its recent comments on the California ALJ's decision that it intends to implement on June 15th only if the CaPUC approves a new dialing parity plan that requires implementation by that date.[12] Thus, although the Petition represents to this Commission that Pacific requires a waiver of the May 7, 1999 date, Pacific simultaneously is contending in CaPUC proceedings that the May 7th date does not apply to it. In fact, as shown above, Pacific has asserted to the CaPUC that the ILP Order does not bind state commissions at all. In short, the instant Petition appears to be nothing more than an attempt to moot the issue of compliance with the FCC's May 7th deadline while Pacific attempts to win further delays in the states.

Pacific contends that it may re-file its plan because the plan previously approved by the CaPUC purportedly set an implementation date that was contingent on Pacific's obtaining interLATA relief, and because some aspects of the plan, such as customer notification timelines, would conflict with a May 7th rollout of ILP. AT&T and other parties participating in the California proceeding have demonstrated that the CaPUC's order does not contemplate that ILP implementation must be contingent on interLATA relief. However, even accepting Pacific's interpretation of its plan, there is no basis for it to delay ILP implementation beyond May 7th.

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11 See id., p. 12.

12 See Pacific's State Brief, p. 11 ("That [June 15, 1999] date, of course, is contingent on this Commission adopting a dialing parity plan that can be achieved by June 15, 1999.").

The ILP Order recognizes that some "approved plans" may contain timetables that are inconsistent with that established by the Commission or may be somehow contingent -- and that order expressly provides that such inconsistencies or contingencies shall not operate to delay implementation:

> No later than May 7, 1999, all LECs must implement intraLATA toll dialing parity plans already filed and approved by the state regulatory commission for each state in which the LECs provide telephone exchange service. LECs must implement such intraLATA toll dialing parity plans by May 7, 1999, whether or not the state regulatory commission has ordered implementation of the approved plan, and notwithstanding any date subsequent to May 7, 1999, that may have been ordered by the state commission.[13]

An approved plan that makes ILP implementation contingent on interLATA relief is likewise a plan that sets a date subsequent to May 7th -- the fact that the plan does not set a date certain is irrelevant, as the order provides that LECs are required to implement approved plans even when those plans do not specify a date at all. The ILP Order made clear that interLATA contingencies would not permit a BOC to delay ILP:

> [A] few states have tied the implementation of intraLATA toll dialing parity to the date on which the incumbent BOC begins to offer in-region interLATA service, a result that needs to be revised in light of the Commission's reinstated rules.[14]

The fact that specific elements of a plan, such as customer notification timelines, might not fit the ILP Order's timeline is necessarily irrelevant as well, as is the fact that telemarketing scripts or other elements of a plan may require minor revisions. The Commission was well aware when it enacted the ILP Order that some aspects or previously approved plans might not comport with a May 7th implementation date, yet it unequivocally required LECs with approved plans to begin providing dialing parity on May 7th. Any other reading of the order would render it a nullity, as virtually any LEC with an approved, but not yet implemented, plan

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13 ILP Order, ¶ 7 (emphasis added).

14 ILP Order, ¶ 6 n.21.

could devise an argument that it must file a "new" plan to resolve some outstanding issue, and thereby delay ILP.

Pacific's last ditch efforts at both the state and federal levels to avoid the ILP Order's May 7th deadline reveal that its goal is simply to deny consumers and competitors the benefit of ILP for as long as possible. Rather than reward these efforts, the Commission should deny the instant waiver petition forthwith and prevent Pacific from using this delay as a basis to seek still further postponement of ILP.

II. The Petition Is Irretrievably Marred By Untenable Claims And Internal Inconsistencies

The Petition is rife with untenable claims and internal inconsistencies.[15] Most glaringly, although Pacific requests a waiver of the ILP requirement until June 15, 1999 for the entire state of California, the Petition states that Pacific implemented interstate-only ILP -- the network change that supposedly is the root of petitioners' inability to timely provide ILP -- in only one California LATA.[16] Thus, even accepting Pacific's claims at face value, the waiver it seeks should be necessary only for LATA 730, not for the entire state of California.

Similarly, the Petition admits in a footnote that it can provide ILP in Nevada by June 9, 1999.[17] However, this footnote asserts that "it is more efficient for implementation in California and Nevada to occur on the same date (June 15, 1999) since they have common

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15 See, e.g., Rio Grande Family Radio Fellowship, Inc. v. FCC, 406 F.2d 664, 666 (D.C. Cir. 1968) (petitioner must "plead with particularity the facts and circumstances which warrant [the waiver]").

16 Petition, p. 3 ¶ 5 (stating that Pacific began to implement interstate-only ILP in LATA 730); see also Interstate ILP Waiver Petition, p. 7 (listing on LATA 730 as the only "affected LATA" in California).

17 Petition, p. 4 n.4.

ordering, provisioning and billing systems."[18] The Petition provides no support of any kind for this claim, and does not even attempt to describe what the benefit of these purported "efficiencies" might be, or whether they will benefit anyone other than Pacific. The fact that Pacific would prefer to postpone ILP in Nevada for a week longer than its purported technical problems warrant plainly does not constitute the requisite "good cause" for a waiver. By its own terms, the Petition cannot justify a waiver that extends beyond June 9, 1999 for affected LATAs in Nevada.

Further, Pacific contradicts itself as to the date it contends that it began working to "undo" interstate-only ILP in its network. The Petition asserts that "Pacific Bell commenced making the network and software changes the week of March 22, 1999 following receipt of the Commission's Order."[19] However, Pacific's affiant states that "Nevada Bell and Pacific Bell require 120 calendar days to implement ILP .... That 120 calendar day interval began February 10, 1999."[20] This discrepancy potentially extends by more than a month the time Pacific asserts it requires in order to provide ILP. The 120-day interval cited in the affidavit is open to question as well, as Pacific's affiant provides a timetable indicating that the work Pacific asserts it must do can be completed in just 87 business days.[21] It would be patently unreasonable to permit Pacific to extend its monopoly over direct-dialed intraLATA calling in California by more than a month simply because it elects not to perform ILP implementation on weekends or evenings.

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18 Id.

19 Id., p. 4 ¶ 8 (emphasis added).

20 Petition, Declaration of Nancy R. Forst, p. 2 ¶ 5 (emphasis added).

21 Id., p. 12.

Even accepting, arguendo, Pacific's claim that it requires 120 days to undo the changes it allegedly made to its network (but did not reveal to the Commission) in order to implement interstate-only ILP, there are no valid grounds for the instant waiver request. If Pacific had begun to implement ILP when the Supreme Court decided Iowa Utilities Board in January, it would not require the instant waiver at all, but could provide ILP by May 7th. Iowa reinstated the Commission's 1996 ruling that 47 U.S.C. § 251(b)(3) requires BOCs such as Pacific to implement ILP no later than February 8, 1999. Even assuming that Pacific might reasonably have expected the Commission to grant it some period of time beyond that date to implement ILP, it plainly had no basis to wait until the ILP Order issued in late March to begin preparing for full 2-PIC dialing parity.[22] Pacific cannot plausibly contend that it was surprised to learn last month that the Commission, having just won a two and one-half year court battle to reinstate its dialing parity rules, would require BOCs promptly to offer ILP in accord with its previous conclusions concerning the requirements imposed by the 1996 Act.

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[22] Although Pacific's sister BOC, Southwestern Bell ("SWBT"), joined it in petitioning for a waiver of interstate-only dialing parity in late 1998 and made the same representations to the Commission concerning its purported need to modify its network to offer that capability, SWBT has not suggested that it cannot provide ILP by May 7, 1999 in Texas and other states in which it has an approved dialing parity plan. At minimum, Pacific should explain why its purported situation is so different from SWBT's.

CONCLUSION

The instant Pctition is not a good faith request by a carrier that has encountered technical difficulties in its efforts to implement dialing parity, but merely another gambit by Pacific to deny consumers and competitors the benefit of ILP. AT&T urges the Commission to reject the instant waiver request, and to send a clear signal to Pacific that it must comply with the ILP Order.

Respectfully submitted,

AT&T CORP.

By _____

Mark C. Rosenblum
Roy E. Hoffinger
James H. Bolin, Jr.

Its Attorneys

Room 3245H1
295 North Maple Avenue
Basking Ridge, NJ 07920
phone: (908) 221-4617

April 13, 1999

CERTIFICATE OF SERVICE

I, Terri Yannotta, do hereby certify that on this 13th day of April, 1999, a copy of the foregoing "Opposition of AT&T Corp." was served by U.S. first class mail, postage prepaid, to the party listed below:

Robert M. Lynch
Roger K. Toppins
Mark Royer
Pacific Bell and Nevada Bell
One Bell Plaza, Room 3024
Dallas, Texas 75202

Terri Yannotta

April 13, 1999